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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION

MPA/145121

PRELIMINARY RECITALS

Pursuant to a petition filed November 08, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on February 07, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the evidence offered on behalf of Petitioner demonstrates that a prior authorization request for speech language therapy meets the standards necessary for Wisconsin Medicaid approval.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Theresa Walske, MS, CCC-SLP
Office of the Inspector General
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.

2. Petitioner timely filed this appeal to contest a denial of a prior authorization (PA) request filed on her behalf seeking Medicaid payment for speech language therapy.
3. The PA noted was filed on or about July 24, 2012 by Petitioner's provider, Children's Hospital of Wisconsin. It sought Medicaid payment for 12 speech language therapy sessions to be provided at a frequency of once per week for twelve weeks. The cost was noted to be \$3423.00. Per agency records this is the 12th PA filed on behalf of Petitioner.
4. Petitioner is 4 years of age ([REDACTED]). Petitioner's diagnosis is choreoathetosis.¹ Petitioner has global delays in gross-motor, fine motor and speech/language skills. Petitioner does attend a school program in the Mukwonago School District 3 days per week at 2½ hours per day. Two ½ hour speech therapy sessions are provided during the week; one group and one individual.

DISCUSSION

When determining whether to approve therapy, the DHCAA must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, §DHS 107.02(3)(e)*:

(e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

(a) Required to prevent, identify or treat a recipient's illness, injury or disability; and

(b) Meets the following standards:

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;

¹ A nervous disturbance marked by the involuntary purposeless and uncontrollable movements characteristic of chorea and athetosis. Chorea is any of various nervous disorders of infectious or organic origin marked by spasmodic movements of the limbs and facial muscles and by incoordination. And athetosis is a nervous disorder that is marked by continual slow movements especially of the extremities and is usually due to a brain lesion. All per <http://www.merriam-webster.com/medical>.

8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m).

As with most public assistance benefits the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services*, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003). In other words, it is a Petitioner's burden to demonstrate that s/he qualified for the requested continued services by a preponderance of the evidence. It is not the Department's burden to prove that s/he is not eligible.

Further, I note that Medicaid is meant to provide the most basic and necessary health care services at a reasonable cost to a large number of persons and must authorize services according to the Wisconsin Administrative Code definition of medical necessity and other review criteria noted above. It is not enough to demonstrate a benefit; rather, all of the tests cited above must be met.

Finally,

(e) *Extension of therapy services.* Extension of therapy services shall not be approved in any of the following circumstances:

1. The recipient has shown no progress toward meeting or maintaining established and measurable treatment goals over a 6-month period, or the recipient has shown no ability within 6 months to carry over abilities gained from treatment in a facility to the recipient's home;

...

Wis. Admin. Code, § DHS107.18(3)(e).

The Department denied this request for lack of demonstrated measurable progress over a 6 month period.

And it is for that reason that I am sustaining the Department denial. A significant volume of documentation has been submitted on behalf of Petitioner and, while there is anecdotal evidence of progress, it has not been reflected in measurement. For example, three physicians wrote with respect to Petitioner's speech; one indicated that her language has improved as she is speaking in phrases but that the vocalization pattern was choppy without Petitioner having the ability to make a sustained sound. Another wrote that Petitioner's overall speech and eligibility is limited to about 50% with context and 30% out of context. Another that he could understand Petitioner's speech in context but that speech was unintelligible out of context. But none of these provide any measurement and are rather subjective. The provider's documentation indicates that speech intelligibility with context and without context did not change between December 2011 and July 2012. Again, without measured progress, the Department correctly denied this prior authorization request.

NOTE: Petitioner's family should be aware that Petitioner's provider will not receive a copy of this Decision. If the family wishes the provider to have a copy, the family must provide a copy to the provider.

CONCLUSIONS OF LAW

That the Department of Health Services correctly denied this prior authorization request as the documentation does not demonstrate measured progress.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

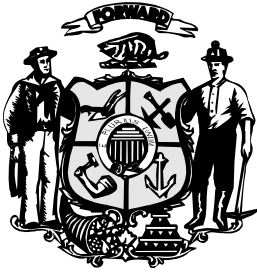
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 12th day of March, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 12, 2013.

Division of Health Care Access And Accountability